



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

May 12, 2022

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving the City of Seattle

FROM: Justina Fugh, Director
Ethics Office and
Alternate Designated Agency Ethics Official

TO: Casey Sixkiller
Regional Administrator
Region 10

As Regional Administrator for the United States Environmental Protection Agency (EPA) Region 10, you seek permission to participate in specific party matters involving the City of Seattle, Washington. Within the last year, prior to being selected for this position, you served as the Senior Strategic Director for the Office of the Mayor.

Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state and local government are excluded under the definition of “former employer.”¹ Therefore, the Ethics Pledge does not apply to your City of Seattle employment.

You are not vested in any defined benefit plan with the City of Seattle so do not have any financial conflict of interest. What remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, “Impartiality in Performing Official Duty.” Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), you have a “covered relationship” with the City of Seattle as your former employer. Until January 3, 2023, absent an impartiality determination from OGC/Ethics, you cannot participate in any specific party matter in which Seattle is a party or represents a party if that matter is likely to have a direct and predictable effect upon it or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ *See* Exec. Order 13989, Section 2(k), which provides that “‘former employer’ does not include...State or local government.”

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You may be asked to participate in discussions and meetings related to particular matters that affect the City of Seattle. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the City of Seattle, but not for any specific party matters that you had participated in personally and substantially previously. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – While employed by the City of Seattle, you served as the Senior Strategic Director and, previous to that, as the Deputy Mayor for Operations. You did not hold any position through which the City might share responsibility with EPA in protecting human health and the environment.

Effect of the matter upon your financial interest

You are not vested in any defined benefit plan with the City so do not have any financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – In your role as Regional Administrator, you will be responsible for four states and 271 tribal nations. You will be expected to communicate freely with all of the cities, states and tribes in your region, including Seattle.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raises nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this limited determination to interact with the City of Seattle, except for any specific party matter that you had participated in previously on their behalf, nothing in this impartiality determination should preclude you from choosing to recuse yourself voluntarily, although you are advised to confer with OGC/Ethics or your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the City of Seattle as an entity.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Janet McCabe, Deputy Administrator
Dan Utech, Chief of Staff
Michelle Pirzadeh, Deputy Regional Administrator, Region 10
Beverly Li, Regional Counsel, Region 10
Garth Wright, Regional Ethics Counsel, Region 10